

ENTERED ON DOCKET

JUN 9 1992

FILED

JUN 8 - 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

KATY BROCKSMITH,
Plaintiff,

vs.

Case No. 91-C-991-B

INDEPENDENT SCHOOL DISTRICT NO. 1
OF TULSA COUNTY, OKLAHOMA,

Defendant.

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

The plaintiff, Katy Brocksmith, and the defendant, Independent School District No. 1 of Tulsa County, Oklahoma, advise the court of a settlement agreement between the parties and pursuant to Rule 41(a)(1)(ii), Fed. R. Civ. P., jointly stipulate that the plaintiff's action against the defendant, Independent School District No. 1 of Tulsa County, Oklahoma, be dismissed with prejudice, the parties to bear their respective costs, including all attorney's fees and expenses of this litigation.

Dated this 1st day of June, 1992.

Katy Brocksmith
Katy Brocksmith, Plaintiff

Laura Emily Frossard
Laura Emily Frossard
1408 South Denver
Tulsa, OK 74119

Attorneys for Plaintiff

J. Douglas Mann
J. Douglas Mann, OBA #5663
ROSENSTEIN, FIST & RINGOLD
525 South Main, Suite 300
Tulsa, Oklahoma 74103
(918) 585-9211

Attorneys for Defendant

DATE ~~JUN 8 1992~~IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LEBEN OIL CORPORATION,

Plaintiff,

v.

Case No. 91-C-60-B ✓

ARKLA, INC., a Delaware
Corporation, ARKANSAS-
LOUISIANA GAS COMPANY, a
Delaware corporation, and
ARKLA ENERGY RESOURCES, a
division of ARKLA, INC.,

Defendants.

FILED

JUN 5 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMAORDER OF DISMISSAL

On this 5th day of June, 1992, the Joint Motion to Dismiss of plaintiff and defendants came on to be considered. It appearing to the Court that the above-captioned case has been settled between the parties, it is therefore

ORDERED that the parties' Joint Motion to Dismiss is granted and that the above-captioned case is dismissed with prejudice, with each party to bear its own costs and attorney fees.


UNITED STATES DISTRICT COURT JUDGE


IN THE UNITED STATES DISTRICT COURT FOR ~~THE~~ **JUN 8 1992**
NORTHERN DISTRICT OF OKLAHOMA

TERRY A. JENKINS,

Plaintiff,

v.

GREEN BAY PACKAGING, INC., a

Wisconsin Corporation, et al.,

Defendants.

RICHARD E. LOHMANN,

Plaintiff,

v.

GREEN BAY PACKAGING, INC., a

Wisconsin Corporation, et al.,

Defendants.

LARRY B. KUNS,

Plaintiff,

v.

GREEN BAY PACKAGING, INC., a

Wisconsin Corporation, et al.,

Defendants.

Case No. 91-C-639-B
Consolidated

FILED

MAY 29 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

STIPULATED DISMISSAL WITH PREJUDICE

The Plaintiffs, Terry A. Jenkins and Larry B. Kuns dismiss with prejudice their actions as to Defendants, Lewis L. Narwold and E.D. Hamilton.

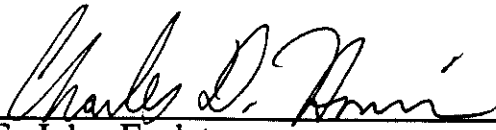
Dated this 29th day of May, 1992.

Respectfully submitted,

By: George P. Phillips
George P. Phillips
46 East Sixteenth Street
P.O. Box 4680
Tulsa, Oklahoma 74159
(918) 583-4484

Attorney for Terry A. Jenkins
and Larry B. Kuns

Agreed to:



E. John Eagleton
Charles D. Harrison
Houston and Klein, Inc.
320 South Boston, Suite 700
Tulsa, Oklahoma 74103
(918) 583-2131

Attorneys for Lewis L. Narwold and
E.D. Hamilton

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27th day of May, 1992 a true and correct copy of the above and foregoing instrument was mailed to the following with sufficient postage thereon prepaid:

James L. Kincaid
Barbara A. Covey
Crowe & Dunlevy
500 Kennedy Building
321 South Boston
Tulsa, Oklahoma 74103

Robert L. Liebross
730 Seventeenth Street
Suite 900
Denver, Colorado 80202

Jean Walpole Coulter
Pray, Walker, Jackman, Williamson
& Marlar
Oneok Plaza
9th Floor
Tulsa, Oklahoma 74103


George P. Phillips

ENTERED ON DOCKET

DATE 6-8-92 H

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MANCLE J. CARRIER,

Plaintiff,

v.

LOUIS W. SULLIVAN, M.D.,
Secretary of Health and
Human Services,

Defendant.

No. 85-C-300-E

FILED

JUN 05 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA


ORDER

The court has for consideration the Report and Recommendation of the Magistrate Judge filed March 10, 1992, in which the Magistrate Judge recommended that the Secretary's decision be reversed, and that plaintiff's surviving children be found to be entitled to disability insurance benefits under §§ 216(i) and 223 of Title II of the Social Security Act, 42 U.S.C. §§ 416(i) and 423. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate Judge should be and hereby is affirmed.

It is therefore Ordered that the Secretary's decision is reversed and plaintiff's surviving children are found to be entitled to disability insurance benefits under §§ 216(i) and 223 of Title II of the Social Security Act, 42 U.S.C. §§ 416(i) and 423. This cause is remanded to the Secretary for computation and payment of those benefits.

Dated this 14th day of April, 1992.



JAMES O. ELLISON, CHIEF
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 6-8-92

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT G. WOOD, et al.,

Plaintiffs,

vs.

No. 92-C-228-E

WEST AMERICA INSURANCE
COMPANY and/or OHIO CASUALTY
GROUP OF INSURANCE COMPANIES,
et al.,

Defendants.

FILED

JUN 05 1992


Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Comes now before the Court for its consideration a joint motion of all remaining parties to remand the above-stated cause to the district court of Craig County, State of Oklahoma. After review and for good cause shown, the Court finds said motion should be granted.

IT IS THEREFORE ORDERED that the motion of all parties to remand said cause to the district court of Craig County, State of Oklahoma, is hereby granted.

ORDERED this 5th day of June, 1992.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUN 04 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DONALD RAY MAXWELL,)
)
Petitioner,)
)
v.)
)
RON CHAMPION)
)
Respondent.)

92-C-459-E

ENTERED ON DOCKET

DATE 6-5-92

ORDER

The Court having examined petitioner's Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 finds as follows:

(1) That the petitioner is contesting his conviction in the Muskogee County District Court, which is located within the territorial jurisdiction of the Eastern District of Oklahoma.

(2) That the petitioner demands his release from the custody imposed as a result of that conviction and as grounds therefore alleges he is being deprived of his liberty in violation of rights under the Constitution of the United States.

(3) In the furtherance of justice this case should be transferred to the United States District Court for the Eastern District of Oklahoma.

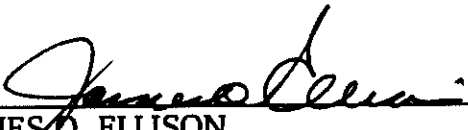
IT IS THEREFORE ORDERED:

(1) Pursuant to the authority contained in 28 U.S.C. § 2241(d) and in the exercise of discretion allocated to the Court, this cause is hereby transferred to the United States District Court for the Eastern District of Oklahoma for all further proceedings.¹

¹ Title 28 U.S.C. § 2241(d) states: "Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court

(2) The Clerk of this Court shall mail a copy of this Order to the petitioner.

Dated this 3rd day of June, 1992.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such application is filed in the exercise of discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination."

ENTERED ON DOCKET

DATE JUN 5 1992IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**FILED**JUN 4 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

LAWRENCE L. WRIGHT,

Plaintiff ,

vs.

No. 91-C-0515-B

JOHN DEERE & CO.,

Defendant .

ORDER

Rule 35A of the Rules of the United States District Court or the Northern District of Oklahoma provides as follows:

A. In any case in which no action has been taken by the parties for six (6) months, it shall be the duty of the Clerk to mail notice thereof to counsel of record or to the parties, if their post office addresses are known. If such notice has been given and no action has been taken in the case within thirty (30) days of the date of the notice, an order of dismissal may, in the Court's discretion, be entered.

In the action herein, notice pursuant to Rule 35A was mailed to counsel of record or to the parties, at their last address of record with the Court, on April 27, 1992. No action has been taken in the case within thirty (30) days of the date of the notice.

Therefore, it is the Order of the Court that this action is in all respects dismissed.

Dated this 4th day of June, 1992.

James C. Ellison
United States District Judge

For: *Thomas R. Brett*

ENTERED ON DOCKET

DATE 6-5-92

FILED

JUN -5 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HULEX MUSIC, BLEU DISQUE MUSIC CO.,)
INC., WB MUSIC CORP., WEBO GIRL)
PUBLISHING, INC. AND FAMOUS MUSIC)
CORPORATION,)

Plaintiffs,)

vs.)

PERRCORP., INC., d/b/a TULSA)
ATHLETIC CLUB AND SAM PERRYMAN,)


Defendants.)

Case No. 91-C-891 E

JUDGMENT ON DEFENDANTS' OFFER OF JUDGMENT

In accordance with the Offer of Judgment filed by the defendants, Perrcorp., Inc., d/b/a Tulsa Athletic Club and Sam Perryman, filed May 26, 1992 and the plaintiffs' Notice of Acceptance of Defendants' Offer of Judgment and proof of service dated June 3, 1992, which is attached hereto, and pursuant to Rule 68, Fed. R. Civ. P., it is hereby ORDERED, ADJUDGED AND DECREED that the plaintiffs be and are hereby awarded judgment against the defendants, Perrcorp., Inc., d/b/a Tulsa Athletic Club and Sam Perryman in the sum of Two Thousand and No/100 Dollars (\$2,000.00), with costs now accrued.

Dated this 5th day of June, 1992.


U.S. Court Clerk
Northern District of Oklahoma

Richard M. Lawrence, Clerk

ENTERED ON DOCKET
DATE 6-5-92

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 04 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JEANINE GOODSON,

Plaintiff,

V.

DAN TOMAC,

Defendant.


No. 91-C-408-E

ORDER

Now before the Court for consideration is the motion of Plaintiff, Jeanine Goodson, that the above captioned case be dismissed as to Defendant, Dan Tomac, without prejudice. After careful consideration of the record the Court is of the opinion that Plaintiff's motion should be granted.

IT IS THEREFORE ORDERED that the motion of Plaintiff, Jeanine Goodson, to dismiss this case as to Defendant Dan Tomac without prejudice is hereby granted.

SO ORDERED this 2nd day of June 1992.


CHIEF JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 6-4-92

FILED

JUN - 3 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

KIMBERLEY LINDEMANN

Plaintiff,

vs.

Case No. 91-C-684-C

SKYLINE TERRACE, INC.

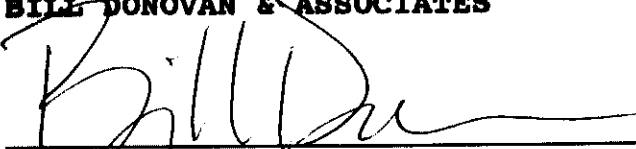
Defendant.

STIPULATION ~~AND~~ DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, Kimberley Lindemann, by and through her attorneys of record, and the defendant, Skyline Terrace, Inc., by and through its attorneys of record, and stipulate that the above captioned action against the Defendant, Skyline Terrace, Inc., in the above-entitled cause be dismissed without prejudice.

Plaintiff would advise the Court that an Application For Dismissal Without Prejudice was previously filed herein. That the defendant objected upon the initial filing of said Application; however, on May 8, 1992 Randall Vaughan, attorney for the defendant, communicated with Bill Donovan & Associates and agreed to withdraw Defendant's previous objection to said Application and stipulate that the case be Dismissed without prejudice.

BILL DONOVAN & ASSOCIATES


William C. Donovan, III OBA 2425
111 East First, Suite 220
Tulsa, OK 74103
(918) 592-7777

ATTORNEYS FOR PLAINTIFF

**PRAY, WALKER, JACKMAN, WILLIAMSON,
& MARLAR**

A handwritten signature in cursive script, reading "Randall G. Vaughan", written over a horizontal line.

**RANDALL G. VAUGHAN
900 Oneok Plaza
Tulsa, Ok 74103**

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOE EMERSON WEARE; COUNTY
TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

JUN 4 - 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 90-C-694-C

DEFICIENCY JUDGMENT

This matter comes on for consideration this 3 day
of June, 1992, upon the Motion of the Plaintiff, United
States of America, acting on behalf of the Secretary of Veterans
Affairs, for leave to enter a Deficiency Judgment. The Plaintiff
appears by Tony M. Graham, United States Attorney for the
Northern District of Oklahoma, through Phil Pinnell, Assistant
United States Attorney, and the Defendant, Joe Emerson Weare,
appears neither in person nor by counsel.

The Court being fully advised and having examined the
court file finds that a copy of Plaintiff's Motion was mailed by
certified return receipt addressee restricted mail to Joe Emerson
Weare, 3635 South Maybelle, Tulsa, Oklahoma 74107, and by first-
class mail to all answering parties and/or counsel of record.

The Court further finds that on January 10, 1992, the
Defendant, Joe Emerson Weare, was served with Plaintiff's Motion
as is evidenced by the Notice of Service filed on January 30,
1992.

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

The Court further finds that the amount of the Judgment rendered on November 16, 1990, in favor of the Plaintiff United States of America, and against the Defendant, Joe Emerson Weare, with interest and costs to date of sale is \$37,314.47.

The Court further finds that the appraised value of the real property at the time of sale was \$10,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered November 16, 1990, for the sum of \$4,041.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 28 day of Jan, 1992, and Amended Order of 5-14 92.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendant, Joe Emerson Weare, as follows:

Principal Balance as of 11/16/90	\$28,397.68
Interest	6,813.57
Late Charges to Date of Judgment	248.52
Appraisal by Agency	500.00
Management Broker Fees to Date of Sale	200.00
Abstracting	329.50
1989 Taxes	149.00
1990 Taxes	164.00
Publication Fees of Notice of Sale	287.20
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$37,314.47
Less Credit of Appraised Value	- <u>10,000.00</u>
DEFICIENCY	\$27,314.47

plus interest on said deficiency judgment at the legal rate of 4.26 percent per annum from date of deficiency judgment until

paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.


IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendant, Joe Emerson Weare, a deficiency judgment in the amount of \$27,314.47, plus interest at the legal rate of 4.24 percent per annum on said deficiency judgment from date of judgment until paid.

(Signed) M. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney


PHIL PINNELL, OBA #7169
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

PP/css

ENTERED ON DOCKET

IN THE UNITED STATES DISTRICT COURT FOR THE DATE 6-4-92
NORTHERN DISTRICT OF OKLAHOMA

already closed

DANIEL B. McDEVITT,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant,

vs.

WALTER H. MCKENZIE, et al.,
Third-Party Defendants.

No. 89-C-576-C

FILED

JUN 3 - 1992 *rm*

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

On May 11, 1992 the Court entered a minute order directing the parties to advise of the status of this litigation, in view of the fact that their respective appeals had been dismissed with prejudice. In response, a stipulated dismissal of the government's counterclaim against Troy Eutsler has been filed, and plaintiff has advised that he considers the case closed.

It is the Order of the Court that all pending motions are hereby declared moot and that this case be administratively closed.

IT IS SO ORDERED this 3 day of June, 1992.

H. Dale Cook
H. DALE COOK

United States District Judge

ENTERED ON DOCKET
DATE JUN 4 1992

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUN -3 1992

ATLANTIC RICHFIELD CO.,)
)
Plaintiff,)
)
vs.)
)
AMERICAN AIRLINES, INC.,)
et al.,)
)
Defendants.)
AND OTHER CONSOLIDATED ACTIONS)

Case No.'s 89-C-868-B
89-C-869-B
90-C-859-B

VACUUM & PRESSURE TANK TRUCK)
SERVICES,)
)
Defendant and Third)
Party Plaintiff,)
)
vs.)
)
AMERIGAS, INC.; ATLAS)
TRUCKING CO., INC.; AYCOCK)
LEASING a/k/a AYCOCK)
INVESTMENT COMPANY; B & D)
TRUCK SERVICE; BALDOR)
ELECTRIC COMPANY; BALDWIN)
PIANO & ORGAN CO.; BALL BROS)
TRUCKING CO.; BAVARIAN MOTORS,)
INC.; BROWN & ROOT, INC.;)
CHICKASHA MANUFACTURING CO.,)
INC.; CONMACK, INC.; CONOCO,)
INC.; CONTINENTAL BAKING)
COMPANY; GREYHOUND LINES,)
INC.; CRAIN INDUSTRIES, INC.;)
AMERICAN CAN COMPANY d/b/a)
DIXIE CUPS; DESOTO, INC.;)
ENVIRO-CHEM CORPORATION;)
ERNIE MILLER PONTIAC GMC,)
INC.; EXXON CORPORATION;)
FACET ENTERPRISES, INC.)
a/k/a PURALATOR PRODUCTS CO.;)
FEST IMPORTS, INC.; FINE)
TRUCK LINE, INC.; FORSGREN,)
INC.; FRANKS & SONS, INC.;)
GEAR PRODUCTS, INC.; GRIEF)
BROS CORPORATION; HACKNEY)
BROTHERS BODY COMPANY;)
HALLETT CONSTRUCTION COMPANY,)


HEEKING CAN, INC.; JOHN)
 HENSHAL; HUDSON OIL COMPANY;)
 J R WOODS TRANSPORT SERVICES,)
 INC.; JONES TRUCK LINES, INC.;)
 LITTLE ROCK ROAD MACHINERY;)
 MASONITE CORPORATION; MOLL)
 TOOL & PLASTIC; BAXTER HEALTH)
 CARE CORPORATION; OKLAHOMA)
 SOLVENTS & CHEMICAL COMPANY;)
 P M F, INC.; PETROLEUM)
 MARKETING CO.; STANDARD)
 BRANDS, INC. d/b/a PLANTERS)
 PEANUTS; PORCHE RACING;)
 REID SUPPLY COMPANY; RENTAL)
 UNIFORM SERVICES, INC.)
 a/k/a T&G LEASING, INC.;)
 ROLLINS TRUCK RENTAL; SCREW)
 CORPORATION DIVISION VSI;)
 SUPERWRENCH, INC.; SYNTEX)
 AGRI BUSINESS INC. a/k/a)
 SYNTEX CORPORATION; T D)
 WILLIAMSON, INC.; TEXAS)
 INSTRUMENTS, INC., TIMEX)
 CORPORATION; TRANSMISSION)
 SPECIALISTS COMPANY; TULSA)
 TRAILER & BODY, INC.;)
 U S POLLUTION CONTROL, INC.;)
 UNION CARBIDE CHEMICALS AND)
 PLASTIC COMPANY, INC.;)
 VALMONT OILFIELD PRODUCTS)
 COMPANY; WASTE MANAGEMENT OF)
 TULSA, INC.; YATES IMPLEMENT)
 CO., INC.; COMMERCIAL)
 CARTAGE; OLYMPIC OIL COMPANY;)
 RUTHERFORD/PACIFIC, INC.)
)
 Third Party Defendants.)

**NOTICE OF DISMISSAL OF THIRD PARTY DEFENDANT,
PORCHE RACING**

COMES NOW the Defendant/Third Party Plaintiff Vacuum &
 Pressure Tank Truck Services, Inc., pursuant to and in accordance
 with Rule 41(a)(1), Federal Rules of Civil Procedure, and hereby
 dismisses its Third Party Complaint in relation to the Third Party
 Defendant, Porche Racing.

Respectfully Submitted,

DOYLE & HARRIS


Steven M. Harris, OBA #3913
Michael D. Davis, OBA #11282
2431 E. 61st St., Suite 260
Tulsa, OK 74136
(918) 743-1276

CERTIFICATE OF MAILING

I do hereby certify that on the 3rd day of June, 1992, I caused to be mailed a true and correct copy of the above and foregoing instrument to the following parties with proper postage fully prepaid thereon.

Larry Gutteridge
SIDLEY & AUSTIN
2049 Century Park East
Suite 3500
Los Angeles, CA 90067

William Anderson
DOERNER, STUART, et al.
1000 Atlas Life Building
415 S. Boston
Tulsa, OK 74103


Steven M. Harris
Michael D. Davis

UNITED STATES DISTRICT COURT FOR THE DATE 6-4-92
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID ALAN SMOCK; HOLLY C. ROSE
n/k/a HOLLY C. SMOCK;
COUNTY TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

JUN 3 - 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 90-C-826-C

DEFICIENCY JUDGMENT

This matter comes on for consideration this 3rd day
of June, 1992, upon the Motion of the Plaintiff, United
States of America, acting on behalf of the Secretary of Veterans
Affairs, for leave to enter a Deficiency Judgment. The Plaintiff
appears by Tony M. Graham, United States Attorney for the
Northern District of Oklahoma, through Phil Pinnell, Assistant
United States Attorney, and the Defendants, David Alan Smock and
Holly C. Rose n/k/a Holly C. Smock, appear neither in person nor
by counsel.

The Court being fully advised and having examined the
court file finds that a copy of Plaintiff's Motion was mailed by
certified return receipt addressee restricted mail to David Alan
Smock and Holly C. Rose n/k/a Holly C. Smock, 7313 South Mingo
Road #1411, Tulsa, Oklahoma 74133, and by first-class mail to all
answering parties and/or counsel of record.

The Court further finds that on March 19, 1992, Defendants, David Alan Smock and Holly C. Rose n/k/a Holly C. Smock, were served with the Plaintiff's Motion as shown on the U.S. Marshal's service.

The Court further finds that the amount of the Judgment rendered on August 2, 1991, in favor of the Plaintiff United States of America, and against the Defendants, David Alan Smock and Holly C. Rose n/k/a Holly C. Smock, with interest and costs to date of sale is \$50,476.15.

The Court further finds that the appraised value of the real property at the time of sale was \$30,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered August 2, 1991, for the sum of \$26,943.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 4th day of March, 1992.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, David Alan Smock and Holly C. Rose n/k/a Holly C. Smock, as follows:

Principal Balance as of 8/2/91	\$40,217.89
Interest	8,086.02
Late Charges to Date of Judgment	457.92
Appraisal by Agency	300.00
Management Broker Fees to Date of Sale	737.00
Abstracting	310.50
Publication Fees of Notice of Sale	141.82
Court Appraisers' Fees	<u>225.00</u>
TOTAL	\$50,476.15
Less Credit of Appraised Value	- <u>30,000.00</u>
DEFICIENCY	\$20,476.15

plus interest on said deficiency judgment at the legal rate of 4.26 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, David Alan Smock and Holly C. Rose n/k/a Holly C. Smock, a deficiency judgment in the amount of \$20,476.15, plus interest at the legal rate of 4.26 percent per annum on said deficiency judgment from date of judgment until paid.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney

A handwritten signature in cursive script, appearing to read "Phil Pinnell".

PHIL PINNELL, OBA #7169
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Deficiency Judgment
Civil Action No. 90-C-826-C

ENTERED ON DOCKET

DATE 6-4-92

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

J AND S LAND AND CATTLE COMPANY, }
CHARLES A. SHERMAN and }
JOYCE SHERMAN, }

Plaintiffs, }

vs. }

No. 91-C-575-C ✓

CHARLES L. STINSON, d/b/a }
HORSE CAVE STOCKYARDS and }
d/b/a E AND L CATTLE COMPANY, }

Defendant, }

vs. }

CHARLES A. SHERMAN, }
Third-Party Defendant. }

FILED

JUN 3 - 1992 *mm*

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Before the Court is the motion of defendant for attorney fees. Defendant seeks an award of \$6,054.00 and plaintiffs have responded that they do not object.

It is the Order of the Court that the motion of the defendant for attorney fees is hereby granted in the amount of \$6,054.00.

IT IS SO ORDERED this 3 day of June, 1992.

H. Dale Cook
H. DALE COOK
United States District Judge

26.

ENTERED ON DOCKET

DATE 6-4-92

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 3 - 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

J AND S LAND AND CATTLE COMPANY, }
CHARLES A. SHERMAN and }
JOYCE SHERMAN, }
Plaintiffs, }
vs. }
CHARLES L. STINSON, d/b/a }
HORSE CAVE STOCKYARDS and }
d/b/a E AND L CATTLE COMPANY, }
Defendant, }
vs. }
CHARLES A. SHERMAN, }
Third-Party Defendant. }

No. 91-C-575-C

ORDER

Before the Court is the motion of the plaintiffs Joyce Sherman and J and S Land and Cattle Company for relief from Judgment. On February 27, 1992, this Court entered Judgment against these two plaintiffs in the amount of \$8,705.27 with interest as to defendant's counterclaim. Judgment was also entered in favor of defendant as to plaintiffs' claims.

In the present motion, plaintiffs assert "excusable neglect" pursuant to Rule 60(b)(1) for their failure to respond to requests for admissions, which served as the basis for defendant's motion

for summary judgment, to which plaintiffs also failed to respond. The asserted reasons are: (1) plaintiffs' counsel is unable to locate Joyce Sherman, (2) Charles Sherman, who could respond on behalf of J and S Land and Cattle Company, is in jail in Kentucky, and (3) at the time of the entry of Judgment, plaintiffs' counsel was in Albania. None of these reasons constitutes "excusable neglect" under Rule 60(b). While counsel is back in the United States, he gives no indication that the Shermans will be able to participate in this litigation to any greater extent than they have. Under the present record, granting the motion would be an exercise in futility.

It is the Order of the Court that the motion of the plaintiffs for relief from Judgment is hereby denied.

IT IS SO ORDERED this 3rd day of June, 1992.


H. DALE COOK
United States District Judge

ENTERED ON DOCKET

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DATE 6-4-92

J AND S LAND AND CATTLE COMPANY, }
CHARLES A. SHERMAN and }
JOYCE SHERMAN, }

Plaintiffs, }

vs. }

No. 91-C-575-C ✓

CHARLES L. STINSON, d/b/a }
HORSE CAVE STOCKYARDS and }
d/b/a E AND L CATTLE COMPANY, }

Defendant, }

vs. }

CHARLES A. SHERMAN, }

Third-Party Defendant. }

FILED

JUN 3 - 1992

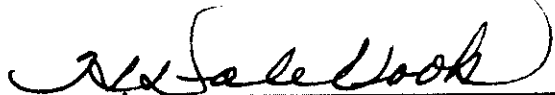
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Before the Court is the motion of the plaintiffs to dismiss. It is unclear if plaintiffs seek a dismissal with or without prejudice. Defendant has responded, asking that any dismissal be with prejudice, citing plaintiffs' failure to participate in discovery or to actively pursue their claims. Upon review of the entire record, the Court agrees with defendant.

It is the Order of the Court that the claims of the plaintiffs are hereby dismissed with prejudice.

IT IS SO ORDERED this 3rd day of June, 1992.


H. DALE COOK
United States District Judge

FILE 1

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUN 02 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORLAND WASSON,)
)
Plaintiff,)
)
v.)
)
RON CHAMPION, et al,)
)
Defendants.)

92-C-454-E

ENTERED ON DOCKET
DATE 6-3-92

ORDER TO TRANSFER CAUSE

The Court having examined the Petition for Writ of Habeas Corpus which the Petitioner has filed finds as follows:

(1) That the Petitioner was convicted in Garfield County, Oklahoma, which is located within the territorial jurisdiction of the Western District of Oklahoma.

(2) That the Petitioner demands release from such custody and as grounds therefore alleges he is being deprived of his liberty in violation of rights under the Constitution of the United States.

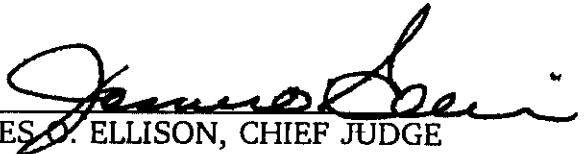
(3) In the furtherance of justice this case should be transferred to the United States District Court for the Western District of Oklahoma.

IT IS THEREFORE ORDERED:

(1) Pursuant to the authority contained in 28 U.S.C. §2241(d) and in the exercise of discretion allocated to the Court, this cause is hereby transferred to the United States District Court for the Western District of Oklahoma for all further proceedings.

(2) The Clerk of this Court shall mail a copy of this Order to the Petitioner.

Dated this 12th day of June, 1992.


JAMES O. ELLISON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 02 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ANSON WILLIAMS,

Plaintiff,

v.

Case No. 91-C-797-E

SHAMROCK COMMUNICATIONS, INC.,
d/b/a Radio Station KMYZ, a/k/a
Z-104.5,

Defendant.

ENTERED ON DOCKET

DATE 6-3-92

ORDER OF DISMISSAL

Now on this 1st day of June, 1992, the Court has for its consideration the Stipulation for Dismissal jointly filed in the above-styled and numbered cause by the Plaintiff and Defendant. Based upon the representations and requests of the parties as set forth in the foregoing Stipulation, it is

ORDERED that Plaintiff's claims for relief against Defendant be and the same are hereby dismissed with prejudice. It is further

ORDERED that each party bear its own costs.

S/ JAMES O. ELLISON

United States District Judge

DATE 6-3-92 HLUNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PATRICIA L. THOMAS; LEROY WEST;
STATE OF OKLAHOMA ex rel.
OKLAHOMA TAX COMMISSION;
COUNTY TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

JUN 02 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 92-C-57-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 1st day of June, 1992. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Wyn Dee Baker, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by J. Dennis Semler, Assistant District Attorney, Tulsa County, Oklahoma; the Defendant, Leroy West, who is one and the same as Leron West, appears by his attorney Harlan S. Pinkerton, Jr.; the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, appears by its attorney M. Diane Allbaugh; and the Defendant, Patricia L. Thomas, appears not, but makes default.

The Court being fully advised and having examined the court file finds that the Defendant, Patricia L. Thomas, acknowledged receipt of Summons and Complaint on February 18,

1991 but the Court finds that this was a scrivener's error and finds that Patricia L. Thomas was served on February 18, 1992; that the Defendant, Leroy West, acknowledged receipt of Summons and Complaint on January 29, 1992; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on January 24, 1992; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 27, 1992; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on January 27, 1992.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on February 13, 1992; that the Defendant, Leroy West, who is one and the same as Leron West, filed his Answer on February 3, 1992; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer and Counterclaim on February 3, 1992; and that the Defendant, Patricia L. Thomas, has failed to answer and her default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Ten (10), Block Eight (8), GLENPOOL PARK,
an Addition in the Town of Glenpool, Tulsa
County, State of Oklahoma, according to the
Recorded Amended Plat thereof.

The Court further finds that on May 27, 1976, the
Defendant, Patricia L. Thomas, executed and delivered to the
United States of America, acting through the Farmers Home
Administration, her mortgage note in the amount of \$23,000.00,
payable in monthly installments, with interest thereon at the
rate of eight and one-half percent (8.5%) per annum.

The Court further finds that as security for the
payment of the above-described note, the Defendant, Patricia L.
Thomas, executed and delivered to the United States of America,
acting through the Farmers Home Administration, a mortgage dated
May 27, 1976, covering the above-described property. Said
mortgage was recorded on June 7, 1976, in Book 4218, Page 298, in
the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Patricia L.
Thomas, made default under the terms of the aforesaid note and
mortgage by reason of her failure to make the monthly
installments due thereon, which default has continued, and that
by reason thereof the Defendant, Patricia L. Thomas, is indebted
to the Plaintiff in the principal sum of \$19,460.68, plus accrued
interest in the amount of \$1,770.25 as of March 4, 1991, plus
interest accruing thereafter at the rate of 8.5 percent per annum
or \$4.5319 per day until judgment, plus interest thereafter at
the legal rate until fully paid, and the costs of this action
accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$608.00, plus penalties and interest, for the year 1991. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Leroy West, who is one and the same as Leron West, has a lien on the property which is the subject matter of this action by virtue of a Judgment entered February 18, 1988, Case No. CS 87 4369, for the amount of \$1,723.47 plus attorney's fees of \$616.00, plus interest at 9.95 percent and costs, filed in the Tulsa County Clerk's office February 25, 1988, in Book 5083 at Page 21.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action by virtue of Tax Warrant No. ITI8800985900, dated July 27, 1988, in the amount of \$5,014.59, together with interest and penalty, and recorded on August 3, 1988, in Book 5119, Page 358 in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that the Internal Revenue Service has a lien upon the property by virtue of a Federal Tax Lien dated December 14, 1990, and recorded on January 10, 1991, in Book 5298, Page 247 in the records of the Tulsa County Clerk,

Tulsa County, Oklahoma. Inasmuch as government policy prohibits the joining of another federal agency as party defendant, the Internal Revenue Service is not made a party hereto; however, by agreement of the agencies the lien will be released at the time of sale should the property fail to yield an amount in excess of the debt to the Farmers Home Administration.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Patricia L. Thomas, in the principal sum of \$19,460.68, plus accrued interest in the amount of \$1,770.25 as of March 4, 1991, plus interest accruing thereafter at the rate of 8.5 percent per annum or \$4.5319 per day until judgment, plus interest thereafter at the current legal rate of 4.26 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$608.00, plus penalties and interest, for ad valorem taxes for the year 1991, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Leroy West, who is one and the same as Leron West, have and recover judgment in the amount of \$1,723.47 plus attorney's fees of \$616.00, plus interest at 9.95 percent and

costs, by virtue of a Judgment entered February 18, 1988, Case No. CS 87 4369, and filed in the Tulsa County Clerk's office February 25, 1988, in Book 5083 at Page 21.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ~~ex~~ rel. Oklahoma Tax Commission, have and recover judgment in the amount of \$5,014.59, together with interest and penalty, by virtue of Tax Warrant No. ITI8800985900, dated July 27, 1988, and recorded on August 3, 1988, in Book 5119, Page 358 in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Patricia L. Thomas, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$608.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

Fourth:

In payment of the judgment rendered herein in favor of the Defendant, Leroy West, who is one and the same as Leron West;

Fifth:

In payment of the judgment rendered herein in favor of the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

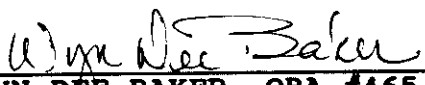
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.


S/ JAMES O. ELLISON

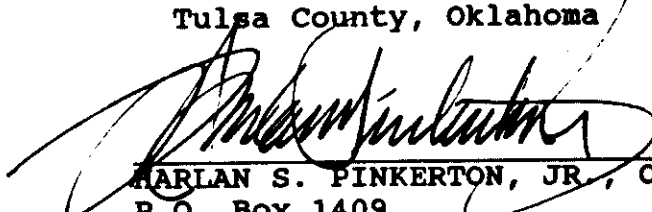
UNITED STATES DISTRICT JUDGE


APPROVED:

TONY M. GRAHAM
United States Attorney


WYN DEE BAKER, OBA #465
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 584-0440
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma


HARLAN S. PINKERTON, JR., OBA #7164
P.O. Box 1409
Tulsa, Oklahoma 74101
(918) 587-7221
Attorney for Defendant,
Leroy West, who is one and
the same as Leron West


M. DIANE ALLBAUGH, OBA #14667
P.O. Box 53248
Oklahoma City, OK 73152-3248
(405) 521-3141
Attorney for Defendant,
State of Oklahoma ex rel.
Oklahoma Tax Commission

Judgment of Foreclosure
Civil Action No. 92-C-57-E

WDB/css

DATE 6-1-92

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JIMMIE ELAINE REBREY,
Plaintiff,

vs.

SUN REFINING & MARKETING
COMPANY, INC.,

Defendant.

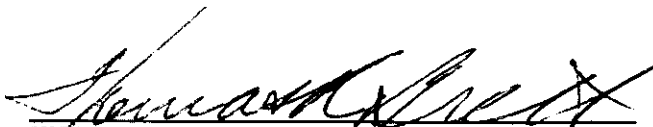
Case No. 89-C-714-B ✓

J U D G M E N T

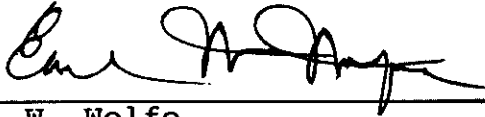
This matter having come on for trial before the Court and a Jury on the 9th day of March, 1992, Plaintiff having rested on the 10th day of March, 1992, and Defendant having moved this Court for a Directed Verdict as to both Plaintiff's public policy wrongful discharge and Title VII claims, said motion having come on for hearing before the Court, and the Court having been fully advised in the matter and a decision having been rendered in accordance with the Order filed May 5, 1992 (copy attached herewith), and the issues having been duly considered,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered for Defendant Sun Refining & Marketing Company, Inc. and against Plaintiff Jimmie Elaine Rebrey, and Plaintiff's Complaint is hereby dismissed with prejudice, with costs awarded to Defendant.

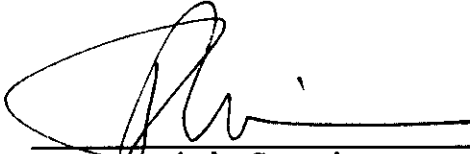
IT IS SO ORDERED this 25 day of May, 1992.


UNITED STATES DISTRICT JUDGE

Approved as to Form:



Earl W. Wolfe
Attorney for Plaintiff



J. Patrick Cremin
Attorney for Defendant

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAY 5 1992

JIMMIE ELAINE REBREY,
Plaintiff,

v.

SUN REFINING & MARKETING
COMPANY, INC.,

Defendant.

Case No. 89-C-714-B

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This matter having come on for trial by jury on the 9th day of March, 1992, and Plaintiff having rested on the 10th day of March, 1992, Defendant, pursuant to Rule 50 of the Federal Rules of Civil Procedure, having moved this Court for a Directed Verdict, as to the Plaintiff's public policy and Title VII claims, it is HEREBY ORDERED, ADJUDGED AND DECREED as follows:

This is an action alleging sex discrimination in employment in violation of 42 U.S.C. § 2000(e) ~~et seq.~~, coupled with a pendent state claim of wrongful discharge in violation of public policy.

Plaintiff Jimmie Elaine Rebrey, a white female, was hired by Defendant Sun Refining & Marketing Company, Inc. ("Defendant") in 1981 as a truck sampler. During the last few years of her employment, Plaintiff worked as an asphalt loader on the gas dock under several supervisors, with Bobby Joe Phillip, being her last supervisor until the date of her discharge.

In August of 1983 Plaintiff failed to stop the flow of asphalt from tank 857 at the Refinery. She was placed on notice

by a memo dated August 12, 1983 from C. L. Branch that any future similar violations would result in discipline. (Plaintiff's Exhibit 2.)

In December of 1985, Plaintiff allowed yet another asphalt tank (#852) to overflow. Plaintiff was reprimanded by her supervisor, Bobby J. Phillipo on December 12, 1985 for Mistakes Due to Carelessness. (Plaintiff's Exhibit 3.)

In October of 1986, Plaintiff permitted a third asphalt tank (#855) to overflow. For this she was suspended from work for one work week without pay and was notified on October 24, 1986 by memo headed Mistakes Due to Carelessness and warned that any future violation may result in her discharge. (Plaintiff's Exhibit 4.)

On January 8, 1988, Plaintiff was working on the gas dock. She had received training and had scored 100% on the gas dock test on December 8, 1987. She had also been trained there by Rose Dennis. Three days before, Kenny Peggs, a Sun employee had reviewed the procedure for circulating and transferring propane with the Plaintiff, although no valves were actually opened. Plaintiff began circulating alcohol through the propane tanks in order to remove moisture, she carelessly opened a red release valve. Plaintiff admitted that she did not know she opened the red valve and that she was in a hurry and did not check the "rising steam" to determine if it had been opened.

Plaintiff turned on the pumps to circulate alcohol. As a result of Plaintiff's carelessness, 2,000 to 3,000 gallons of propane were released into the refinery. As a result of her

carelessness in causing this release, Plaintiff was discharged on January 13, 1988. (Plaintiff's Exhibit 5.)

After her discharge, Plaintiff contacted various Sun officials in an effort to regain her position. Plaintiff also contacted the OHRC to obtain information about filing a charge. Plaintiff filed an official complaint with the Oklahoma Human Rights Commission on November 28, 1988, 315 days after her discharge alleging sex discrimination. (Plaintiff's Exhibit 14, P. 00013.) Plaintiff filed this action in August, 1990.

**PLAINTIFF'S TITLE VII ADMINISTRATIVE
COMPLAINT WAS NOT TIMELY FILED**

A review of Plaintiff's file from the Oklahoma Human Rights Commission and Plaintiff's own testimony establishes that she did not file her administrative complaint under 42 U.S.C. § 2000e-(5) within the time referenced by § 2000e-(5)(b). The Act requires filing within 300 days, in a deferral state, such as Oklahoma.

Plaintiff was notified of her discharge and worked her last day on January 13, 1988. That is the alleged unlawful employment practice of which she complains. In order to timely file her administrative complaint, Plaintiff was required to file an administrative complaint on or before November 9, 1988. As a matter of law, Plaintiff has failed to timely file an administrative complaint resulting in the dismissal of her Title VII claim. See Delaware State College v. Ricks, 499 U.S. 250 (1980); Shardon v. Fernandez, 454 U.S. 6 (1981).

**PLAINTIFF FAILED TO ESTABLISH A
PRIMA FACIE CASE OF SEX DISCRIMINATION**

In a Title VII discharge action, as well as in her pendent state claim the plaintiff must show that she did not violate the employment rule resulting in his discharge, or that if she did, other employees not within the protected class engaged in comparable acts and were not similarly treated. See e.g., McDonnell Douglas Corp. v. Greene, 411 U.S. 792, 804, 93 S.Ct. 817, 1825, 36 L.Ed.2d 668 (1973); McDonnell v. Santa Fe Transportation Co., 427 U.S. 273, 281-83, 96 S.Ct. 2574, 2579-80, 49 L.Ed.2d 493 (1976). Similarly, a plaintiff may establish a case of discriminatory terms and conditions of employment by showing differential treatment, which treatment favored a non-protected employee. Long v. Ford Motor Co., 496 F.2d 500, 505 (6th Cir. 1974). Under Title VII the plaintiff has the initial burden of establishing a prima facie case by showing that the defendant acted with unlawful discriminatory purpose. McDonnell Douglas Corp., supra. McDonnell Douglas was made applicable to discharge cases by the Tenth Circuit in Ray v. Safeway Stores, 614 F.2d 729 (10th Cir. 1980).

A plaintiff alleging sex discrimination in a discharge case must establish by a preponderance of the evidence the following elements to support her prima facie case: (1) that she is female; (2) that she was qualified for the job; (3) that she was discharged; (4) that after her discharge the job remained available or the plaintiff was replaced by a non-female worker. Marks v. Pratco, Inc. 607 F.2d 1153, 1155 (5th Cir. 1979). Some

courts have required a showing that the plaintiff was satisfying the normal requirements of her work, Flowers v. Crouch Walker Corp., 552 F.2d 1277, 1282 (7th Cir. 1977); or, that if Plaintiff's work performance was unsatisfactory to some degree, males were performing similarly and were retained. Boyd v. U.S. Steel Corp., 20 F.E.P. 727 (BNA) (W.D. Pa. 1979).

In this case, Plaintiff failed to establish that she was performing the job in a satisfactory manner, that she was replaced by a male or that males performing similarly were not discharged. The evidence established that prior to her discharge Plaintiff was reprimanded three times for Mistakes Due to Carelessness. While she claims two of these reprimands were unfair, she never grieved them so they remained in her file and effective. In each of the last two incidents, she was advised that a repetition of any such violation could result in her discharge.

Plaintiff admitted that she did not know she opened the valve and further admitted that she was in a hurry and as a result did not observe the stem of the valve to determine whether it was open. It was her carelessness which resulted in the accidental release of propane. Additionally, Plaintiff failed to establish that she was replaced by a male, or that she was treated differently from another male co-worker with a similar hydrocarbon release, Richard Ponds. Like Plaintiff, was discharged for a similar violation. For these reasons Plaintiff has failed to establish a prima facie case of sex discrimination

under Title VII. Therefore both her causes of action against Defendant must be dismissed.

The evidence was unrebutted: Plaintiff was discharged because she jeopardized the safety of herself, the refinery and the community by carelessly releasing the propane. Before the January 8, 1988 incident, she was reprimanded three times for her carelessness. She was twice warned in writing that if she were found in violation again, she would be subject to immediate discharge. Defendant's articulated non-discriminatory reason for her discharge was clearly justified and was in no way pretextual even had Plaintiff been able to make her prima facie case.

This Court thereby sustains Defendant's Oral Motion for a Directed Verdict pursuant to Rule 50 of the Federal Rules of Civil Procedure.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CHAMP JENKINS,

Plaintiff,

vs.

LOUIS W. SULLIVAN, M.D.,
Secretary of Health and
Human Services,

Defendant.

Case No. CIV-88-C-677-C
10th Cir.: 89-5147

FILED

MAY 29 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

ORDER

On October 10, 1991, the Secretary of Health and Human Services reversed its earlier denials of the Plaintiff's benefits, after the Tenth Circuit Court of Appeals reversed and remanded the Secretary's denial for further administrative action. No appeal has been taken from the Secretary's reversal and approval of the Plaintiff's disability and payment of benefits and that determination is now final.

Plaintiff's counsel has expended 61.75 hours in representing the Plaintiff in Federal Court.

The parties have stipulated that an award in the amount of \$4,333.75 for attorney fees is appropriate in this case. \$4,333.75 was supposed to be withheld from the Plaintiff's past benefits from which to pay attorney fees, and Plaintiff's attorney is requesting this fee, which is 25% of the back benefits for the work performed in Federal Court.

**FEE PETITION SCHEDULE
CASE OF:**

Champ Jenkins
SSN 447-36-9291

42 U.S.C. Section 406
Northern District of Oklahoma
No. CIV-88-C-677-C
Tenth Circuit Case No. 89-5147

<u>DATE</u>	<u>HOURS</u>	<u>SERVICES PERFORMED</u>
FEDERAL COURT PROCEEDINGS:		
7-15-88	.5	Initial telecon with client re: representation and appeal to Federal District court
7-18-88	1.0	Reviewed Administrative Law Judge's denial decision and Appeals Council refusal to grant request for review
7-18-88	.2	Telecon with client re: arranging for office conference
7-19-88	1.75	Office conference with client re: his recollections of hearing, medical treatment, Federal Court appeals procedure; prepared agreement form and affidavit for filing in <u>forma pauperis</u>
7-20-88	.75	Reviewed file and prepared Complaint and Summons
7-22-88	.3	Filed Motion and Complaint to proceed in <u>forma pauperis</u>
8-1-88	.2	Reviewed U.S. Magistrate's Order granting leave to file in <u>forma pauperis</u> and Complaint
8-11-88	.1	Received and reviewed process, receipt and return from U.S. Marshall
9-5-88	.2	Reviewed Order re: briefing schedule
9-20-88	.4	Reviewed Defendant's answer with file
9-26-88	3.0	Reviewed administrative transcript and prepared summary of medical issues

**TENTH CIRCUIT COURT OF APPEALS PROCEEDINGS:
Case No. 89-5147**

8-22-89	.3	Telecon with client re: proceeding with appeal to the Tenth Circuit Court of Appeals
8-22-89	1.0	Reviewed Federal Rules of Civil Appellate Procedure and Rules of the Court for the United States Court of Appeals for the Tenth Circuit and prepared and mailed Notice of Appeal
8-29-89	.4	Reviewed documents and correspondence from Court Clerk, Northern District of Oklahoma
9-1-89	1.5	Reviewed file and prepared docketing statement for transmission to the Court Clerk of the Tenth Circuit Court of Appeals
9-1-89	.2	Mailed transcript order form
9-8-89	2.5	Began review of District Court pleadings and transcript and outlined errors to be addressed in brief
9-11-89	2.0	Researched at University of Tulsa Law Library re: Shepardizing and updating previous case law
9-12-89	.2	Prepared and mailed Entry of Appearance to U.S. Attorney and Tenth Circuit Court Clerk
9-12-89	.3	Telecon with client and explained Appellate procedures and briefing schedule
9-14-89	1.5	Updated research on rheumatoid arthritis at University of Oklahoma Medical Library
9-15-89	2.5	Researched Circuit Court case law re: consideration of claimant's impairments in combination and criteria for exertional work standards

9-16-89	3.5	Reviewed all research notes, case law summaries and transcript notes and dictated brief
9-16-90	1.0	Reviewed transcript of taped proceedings of January 19, 1989 in conjunction with transcript
9-19-89	1.0	Reviewed rough draft of brief in conjunction with transcript
9-22-89	.75	Reviewed and corrected final draft of Tenth Circuit brief
9-27-89	1.0	Reviewed brief and prepared copies and final review of Social Security rulings and mailed brief to Tenth Circuit Court of Appeals
10-28-89	1.5	Reviewed Appellee's response brief in conjunction with pleadings and transcript to determine no response necessary
7-25-90	.2	Reviewed correspondence from Tenth Circuit Court of Appeals and mailed acknowledgment form
7-27-90	.2	Reviewed correspondence from Appellee's counsel re: application to re-set oral argument
7-31-90	.4	Telephone conference with United States Attorney re: settlement conference, determined settlement not possible and prepared report of settlement of conference and mailed to Tenth Circuit Court Clerk
8-23-90	.2	Telecon with Appellee's counsel re: Appellee's request to re-schedule oral argument due to Appellee's counsel's scheduling conflict
8-24-90	.3	Telecon with client re: postponement of oral hearing and possibility of proceeding without oral argument

8-24-90	.2	Telecon with Appellee's counsel re: motion to submit cases on the brief
8-27-90	.4	Prepared joint application to submit cases on brief and excuse attendance of counsel and prepared correspondence to Tenth Circuit Court Clerk and mailed
10-8-90	.5	Reviewed Order and Judgment of Tenth Circuit reversing Secretary's decision and remanding for further proceedings
10-10-90	.1	Telecon with client re: favorable remand from Tenth Circuit
10-18-90	.3	Prepared correspondence to Clerk of Northern District of Oklahoma re: obtaining remand order from Northern District of Oklahoma
	23.95	Sub-total: Circuit Court Hours
	61.75	Total Hours

SOCIAL SECURITY ADMINISTRATION

Office of Disability and
International Operations
1500 Woodlawn Drive
Baltimore, Maryland 21241

Date: March 24, 1992

Claim Number: 447-35-9291 4A

Champ Jenkins
Box 44
Oakhurst OK 74050

Due to a systems limitation we erroneously released the amount of attorney fees that should have been withheld.

Information About Attorney Fees.

When a lawyer wants to charge for helping with a social security claim, we must first approve the fee. We usually withhold 25 percent of past due benefits in order to pay the approved lawyer's fee. We withheld \$4333.75 from your past due benefits in case we need to pay your lawyer.

- o If all the work on this case for you and your family is finished, and your lawyer wants to charge a fee, a request to have it approved should be sent to us right away.
- o If all work is not finished in this case, the lawyer should let us know that a fee will be charged. This must be done within 60 days of the date of this letter.
- o If the lawyer will not charge a fee, a statement saying so, signed and dated by the lawyer, should be sent to us instead.

When the amount of the fee is decided, we will let you and the lawyer know how much of this money will be used to pay the fee. We will send any remainder to you. If the approved fee is more than the money we have withheld, the Social Security Administration is not involved in paying the rest of the fee.

We are sending a copy of this letter to Mark Buchner.

Do You Think We Are Wrong?

If you think we are wrong, you have the right to appeal. We will correct mistakes. We will look at any new facts you have. Then a person who did not make the first decision will decide your case again.

- o You have 60 days to ask for an appeal.
- o The 60 days start the day after you get this letter.

SEE NEXT PAGE

SOCIAL SECURITY ADMINISTRATION

447-36-9291 HA

PAGE 2

- o You will have to have a good reason for waiting more than 60 days to ask for an appeal.

If You Have Any Questions?

If you have any questions, call us at 1-800-772-1213. We can answer most questions over the phone. If you prefer to visit one of our offices, please check the local telephone directory for the office nearest you. Or call us and we can give you the office address. Please have this letter with you if you call or visit an office. It will help us answer your questions.

Joseph R. Muffolett
Director

cc: John Slater
Administrative Law Judge
Social Security Administration
51 Yale Bldg Ste 204
Tulsa OK 74135

cc: Mark Buchner
Attorney at Law
3726 S Peoria Ste 26
Tulsa OK 74105

m43/klb

DATE 6-1-92

entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 29 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURTSOUTHPORT EXPLORATION
ASSOCIATES, INC., et al.,

Plaintiffs,

vs.

No. 91-C-392-E

GEOPHYSICS INTERNATIONAL
CORPORATION, et al.,

Defendants.

ORDER

Comes now before the Court for its consideration Defendants Geophysics International Corporation's ("GI") and Jerome I. Conser's ("Conser") motion to dismiss Plaintiffs' complaint. After review of the entire record, the Court finds said motion to dismiss should be granted with respect to Defendant Conser pursuant to its notification of bankruptcy filed April 22, 1991; however, the Court finds that granting said motion to dismiss with respect to GI is not warranted at this time.

The Court bases its ruling on Section 362 of the Bankruptcy Code which provides that the filing of a petition in bankruptcy operates as a stay of:


the commencement or continuation ... of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title ...

11 U.S.C. §362(a)(1).

IT IS THEREFORE ORDERED that said motion to dismiss is hereby granted with respect to Defendant Conser; said motion to dismiss

with respect to Defendant GI is hereby denied.

ORDERED this 29th day of May, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JULIE CHAPMAN,

Plaintiff,

vs.

DOUG NICHOLS, individually
and as Sheriff of
Creek County, et al.,

Defendants.

No. 91-C-539-C ✓

FILED

MAY 28 1992

ORDER

RECEIVED
U.S. DISTRICT COURT

Before the Court is the motion of the defendants for summary judgment. This action arises out of the following facts. Plaintiff was stopped on March 10, 1991 by the Oklahoma Highway Patrol for speeding. When it was discovered that she was driving with a suspended drivers' license, she was arrested, and transported to the Creek County Jail in Sapulpa, Oklahoma. Plaintiff was unable to make bail and, after a two-hour wait, was escorted by a female jail employee back to the jail's laundry room. The door was then closed and no one could see in the room. Only plaintiff and the female employee were present. Plaintiff was asked to remove all her clothing and did so. As she handed each article of clothing to the employee, the employee examined it. While nude, plaintiff was asked to raise her arms and turn around, and she complied. No touching or body cavity search took place.

After plaintiff's bra and panties were examined, these items were returned to her. She was given a clean jail uniform to put on. Plaintiff was then placed in the "women's cell" in the Creek County Jail. Plaintiff has brought this action pursuant to 42 U.S.C. §1983.

In determining whether a genuine issue of material fact remains, the Court views all facts and inferences in the light most favorable to the non-moving party. Burnette v. Dow Chemical Co., 849 F.2d 1269, 1273 (10th Cir. 1988). Defendants raise two grounds in their motion: (1) the jail's procedure is not an unconstitutional search and (2) defendant Nichols is entitled to qualified immunity.

The parties have discussed at length Hill v. Bogans, 735 F.2d 391 (10th Cir. 1984), the most applicable Tenth Circuit precedent. In Hill, plaintiff was arrested for a traffic offense. In the jail lobby, he was required to drop his trousers and shorts in view of ten to twelve people. The Tenth Circuit noted that the Supreme Court held in Bell v. Wolfish, 441 U.S. 520 (1979) that "routine strip searching of pretrial detainees is not a per se violation of the Fourth Amendment." 735 F.2d at 393. The Supreme Court stated:

The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.

441 U.S. at 559.

Applying this test, the Tenth Circuit noted that intermingling with the jail population is "only one factor to consider in judging the constitutionality of a strip search." 735 F.2d at 394. The court emphasized that "[t]here were no circumstances here indicating that Hill might possess either a weapon or drugs." *Id.* The court concluded:

A jail's desire to maintain security, to avoid charges of discriminatory treatment, and to promote administrative convenience simply does not justify routine strip searches in a public area of persons detained for minor traffic offenses.

Id. at 394-95 (emphasis added).

Defendants contend that the Hill rationale does not apply in this case because the search was conducted in private. The Court has found no authority for this proposition. In Dufrin v. Spreen, 712 F.2d 1084 (6th Cir. 1983), the Court upheld a search very similar to the one in this case, i.e., private, visual only, and conducted by an attendant of the same sex as the detainee. However, the Court emphasized that "the arrestee was formally charged with a felony involving violence" *Id.* at 1089. In a subsequent case, the Sixth Circuit stated:

We have found no authority approving a practice of conducting a strip search of a person arrested for a simple traffic violation in the absence of at least reasonable suspicion that the person might be carrying a weapon, illegal drugs, or other contraband.

Masters v. Crouch, 872 F.2d 1248, 1253 (6th Cir.), cert. denied, 493 U.S. 977 (1989).

In other words, when the charged offense is "not normally associated with weapons or other contraband" a blanket visual strip search policy is invalid. See Thompson v. City of Los Angeles, 885 F.2d 1439, 1446 (9th Cir. 1989). Here, defendants have not even attempted to demonstrate that they had a reasonable individualized suspicion that the plaintiff carried drugs or weapons.

Defendants have relied upon a statement in this Court's Order of January 16, 1992 denying plaintiff's motion for preliminary injunction. Based upon the evidence presented at the hearing on that motion, the Court said "it is a stretch of the imagination to even call defendants' procedure a search." Of course, the Court retains the power to alter rulings until final judgment is entered. See Rule 54(b) F.R.Cv.P. Also, plaintiff has presented additional evidence in connection with the present motion. For example, while there was testimony at the hearing that plaintiff was directed to remove her bra, it was not presented to the Court at the preliminary injunction hearing that plaintiff was required to remove her panties as well and to turn around under the eye of the attendant. In addition, defendants admitted in response to requests for admission that "[i]t has been the practice, policy and procedure for the Creek County Sheriff's Office to conduct a strip search of everyone to be incarcerated in the Creek County Jail." Rule 36(b) F.R.Cv.P. provides that "[a]ny matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission."

Defendants also contend that the search was justified because space in the Creek County Jail is limited and all female detainees must go into the same cell. The Tenth Circuit indicated in Hill that maintaining security and administrative convenience are insufficient justifications for routine strip searches of persons detained for minor traffic offenses. 735 F.2d at 394-95. Other authority is in accord. See Masters, 872 F.2d at 1254-55 ("the fact of intermingling alone has never been found to justify [a strip search] without consideration of the nature of the offense and the question of whether there is any reasonable basis for concern that the particular detainee will attempt to introduce weapons or other contraband into the institution"); Thompson, 885 F.2d 1439, 1447 (9th Cir. 1989). The Court has not altered its conclusion, set forth in its January 16 order, that the search here was of its type minimally intrusive. However, under existing authority, this would seem to be an argument for minimal damages, not for non-liability.

Finally, defendant Nichols contends that he is entitled to qualified immunity as to his actions. That defense provides that:

"[w]hen government officials are performing discretionary functions, they will not be held liable for their conduct unless their actions violate 'clearly established statutory or constitutional rights of which a reasonable person would have known.'" In determining whether the law involved was clearly established, the court examines the law as it was at the time of the defendants' actions.

It is the plaintiff's burden to convince the court that the law was clearly established. In doing so, the plaintiff cannot simply identify a clearly established

right in the abstract and allege that the defendant has violated it. Instead, the plaintiff "must demonstrate a substantial correspondence between the conduct in question and prior law allegedly establishing that the defendant's actions were clearly prohibited." While the plaintiff need not show that the specific action at issue has previously been held unlawful, the alleged unlawfulness must be "apparent" in light of preexisting law. The "'contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.'" If the plaintiff is unable to demonstrate that the law allegedly violated was clearly established, the plaintiff is not allowed to proceed with the suit.


Hilliard v. City and County of Denver, 930 F.2d 1516, 1518 (10th Cir.), cert. denied, 112 S.Ct. 656 (1991). (citations omitted).

The test set forth in Bell v. Wolfish, 441 U.S. 520 (1979) requires a balancing of factors. Defendant correctly notes that allegations of constitutional violations that require courts to balance competing interests may make it more difficult to find the law "clearly established" when assessing claims of qualified immunity. Medina v. City and County of Denver, ____ F.2d ____ (10th Cir.) (March 31, 1992) (slip op. at 10). Ordinarily, in order for the law to be clearly established, there must be a Supreme Court or Tenth Circuit decision on point, or the clearly established weight of authority from other courts must have found the law to be as the plaintiff maintains. *Id.* at 11. Applying these guidelines to the facts presented, in view of the discussion of authority above, the Court concludes that it was clearly established at the time of this search that a strip search of a minor traffic offender violates

that person's constitutional rights. The qualified immunity defense is therefore not sustainable on summary judgment.

It is the Order of the Court that the motion of the defendants for summary judgment is hereby denied.

IT IS SO ORDERED this 29th day of May, 1992.


H. DALE COOK
United States District Judge

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

JULIE CHAPMAN,

Plaintiff,

vs.

DOUG NICHOLS, individually
and as Sheriff of
Creek County, et al.,

Defendants.

No. 91-C-539-C ✓

FILED

MAY 20 1992

Plaintiff's Motion for
Summary Judgment

ORDER

Before the Court is the motion of the plaintiff for partial summary judgment. The facts of this case are related in a companion order. Plaintiff asks the Court to enter judgment against defendant Nichols as to liability. Nichols responds by asserting the defense of qualified immunity.

The Court ruled in its companion order that defendants were not entitled to summary judgment based upon the qualified immunity defense. Thus, the present motion would appear to turn upon whether qualified immunity may be presented to a jury. This is an issue somewhat in flux. In Mitchell v. Forsyth, 472 U.S. 511, 528 (1985), the Supreme Court indicated that the availability of the defense is a question of law. The Tenth Circuit, in a case involving alleged violations of the First Amendment, cited Mitchell and said in reference to qualified immunity that "this issue should

not have been submitted to the jury." Melton v. City of Oklahoma City, 879 F.2d 706, 726 (10th Cir. 1989), vacated and remanded on other grounds on reh'g., 928 F.2d 920 (10th Cir.), cert. denied, 112 S.Ct. 296 (1991). These decisions must be reconciled with Bledsoe v. Garcia, 742 F.2d 1237 (10th Cir. 1984), a case involving claims of excessive force and unlawful arrest under the Fourth Amendment, in which the court appeared to approve submitting the issue to the jury. Judge Conway of the District of New Mexico has opined that in light of Anderson v. Creighton, 483 U.S. 635 (1987),

. . . treating the qualified immunity defense as a question of fact in 4th Amendment claims may be warranted, but only in those few cases "in which the facts as the jury found them constitute conduct that a reasonably objective official would not have known was unconstitutional." . . .

Sanchez v. Sanchez, 777 F. Supp. 906, 911 n.2 (D.N.M. 1991) (citation omitted).

In Anderson, the Supreme Court said that the relevant question involving an alleged illegal search was "is the objective (albeit fact-specific) question whether a reasonable officer could have believed [the] warrantless search to be lawful, in light of clearly established law and the information the searching officers possessed." 483 U.S. at 641. The analytical conundrum has been expressed as follows:

To determine what is "clearly established," the court should not involve itself on an abstract level of generality. For example, it is "clearly established" that to violate due process violates a clearly established constitutional right. The real question is:

would a reasonable official conclude that what he or she is doing (the particularized facts) is a violation of a constitutional right.

. . .

Thus, it is possible that an official was objectively "reasonable" in conducting an illegal search under the fourth amendment--i.e., that the officer "reasonably" conducted a search which was illegal under the fourth amendment because that search was an "unreasonable" one within the meaning of the fourth amendment. We can say that an officer can "reasonably" conduct an "unreasonable" search simply because similar language is used to identify different issues. We might as well say that the officer conducted a search properly in light of the objective state of the law, but the search was still invalid because it violated constitutional norms, but not so improper that a court will require the officer to personally pay damages.

R. Rotunda & J. Nowak, Treatise on Constitutional Law: Substance and Procedure, §19.29 at 278-79 (supp. 1991).

Sufficient uncertainty exists that the Court will permit presentation of evidence to the jury both as to liability and damages. This Court stated in the companion order that it was "clearly established at the time of this search that a strip search of a minor traffic offender violates that person's constitutional rights." However, whether an "objectively reasonable" officer could have believed that conducting the search in private comported with the Fourth Amendment is a question which may have to be submitted to the jury.

Plaintiff also raises the issue of punitive damages. The Court sees little in this record which would justify the award of

punitive damages against Nichols. However, this issue is also reserved for trial.

It is the Order of the Court that the motion of plaintiff for partial summary judgment is hereby denied.

IT IS SO ORDERED this 29th day of May, 1992.


H. DALE COOK

United States District Judge